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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

Della Kamkoff, John Andrew, Kayla Birch,
Rose Carney, Tereresa Ferguson, Zoya
Jenkins, Troy Fender, Rhonda Conover,
Autumn Ellanna, and Nataliia Moroz, on
behalf of themselves, and all those similarly
situated,

Plaintiffs,

v.

Heidi Hedberg, in her official capacity As
Commissioner of the Alaska Department of
Health.

Defendant.

Case No. 3:23-cv-00044-SLG

**PLAINTIFFS' STATEMENT
NOTING A DEATH**

PLAINTIFFS' STATEMENT NOTING A DEATH

Della Kamkoff et. al. v. Heidi Hedberg; Case No. 3:23-cv-00044-SLG

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I. PRELIMINARY STATEMENT

Sadly, Della Kamkoff, one of the named-plaintiffs and class representatives, has passed away. Plaintiffs intend to make a motion before this Court to substitute Davis Kamkoff, who was Della Kamkoff's husband and part of her SNAP household, as a successor named plaintiff and class representative. Defendant has indicated that she will not oppose this motion to substitute. However, first, and pursuant to Federal Rule of Civil Procedure 25(a), plaintiffs give formal notice of Della Kamkoff's death upon the record.

II. BACKGROUND LAW ON STATEMENTS NOTING A DEATH

When a party to a lawsuit dies but their claim is not extinguished, Rule 25(a) governs the procedure for, *inter alia*, substituting a successor.¹ The rule states:

(1) *Substitution if the Claim Is Not Extinguished.* If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

(2) *Continuation Among the Remaining Parties.* After a party's death, if the right sought to be enforced survives only to or against the remaining parties, the action does not abate, but proceeds in favor of or against the remaining parties. The death should be noted on the record.

(3) *Service.* A motion to substitute, together with a notice of hearing, must be served on the parties as provided in Rule 5 and on nonparties as provided in Rule 4. A statement noting death must be served in the same manner. Service may be made in any judicial district.²

¹ *Flores v. City of Westminster*, 873 F.3d 739, 760 (9th Cir. 2017).

² Fed. R. Civ. P. 25(a).

The Ninth Circuit has noted that this rule “could be clearer,”³ but has required “two affirmative steps” for giving the “statement noting the death” referred to in Rule 25(a)(1):

First, a party must formally suggest the death of the party upon the record.

Second, the suggesting party must serve other parties and nonparty successors or representatives of the deceased with a suggestion of death in the same manner as required for service of the motion to substitute.⁴

III. PLAINTIFFS’ STATEMENT NOTING DELLA KAMKOFF’S DEATH

By this filing, plaintiffs take the first affirmative step of giving the Court and opposing party a statement noting the death of Della Kamkoff. Plaintiffs formally note the death of Della Kamkoff upon the record, including corroborating facts identified in the declaration of Attorney Sara Lunden that is filed herewith. Davis Kamkoff reported to Attorney Lunden that his wife, Della Kamkoff, died in August 2024. Additionally, Attorney Lunden identified two social media references to Della Kamkoff’s death—one from Davis Kamkoff and one from another family member. Additionally, plaintiffs’ counsel identified a “Go Fund Me” page that had been set up to help support the Kamkoff family expenses when Della was in the hospital prior to her passing.

By and through this filing, plaintiffs take the second affirmative step for giving a statement noting the death of Della Kamkoff by serving defendant with this motion as a formal notice in compliance with Rule 5. Additionally, plaintiffs are now in the process of serving Davis Kamkoff – who was Della Kamkoff’s husband, and who is the only potential

³ *Barlow v. Ground*, 39 F.3d 231, 233 (9th Cir. 1994).

⁴ *Id.* (internal citations omitted); *see also Gilmore v. Lockard*, 936 F.3d 857, 865 (9th Cir. 2019).

nonparty successor that plaintiffs' counsel are aware of (besides the couple's children) – in compliance with Rule 4.⁵

Following completion of service on Davis Kamkoff, Plaintiffs intend to file a motion to substitute Davis Kamkoff as a successor named plaintiff and class representative for Della Kamkoff. Defendant has indicated that she will not oppose this motion.⁶

DATED this 23th day of December, 2024.

Attorneys for Plaintiffs

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⁵ Rule 4 service of nonparty Davis Kamkoff may be somewhat extraneous here, as he is the one who told counsel of Della Kamkoff's passing, and as he already informed counsel that he desires to succeed Della Kamkoff in this case. *See* Declaration of Sara Lunden at ¶ 4. However, in an abundance of caution, Plaintiffs will file proof of Rule 4 service when it is complete. Judge Beistline ordered a similar approach, last year, in *Harris v. Lyou*, 2023 U.S. Dist. LEXIS 26185, *2 (D. Alaska, Jan. 25, 2023).

⁶ *See* Declaration of Sara Lunden at ¶ 9.

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**appearing pro hac vice*

Certificate of Service

I hereby certify that on December 23, 2024, true and correct copies of Plaintiffs' Statement Noting a Death and the Declaration of Sara Lunden were served on all parties via the CM/ECF electronic filing system.

/s/ Saima Akhtar
Saima Akhtar